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dence, it is absolutely necessary that a written request be made to the state commissioner of agriculture, that the certificate be made by the state chemist in person and not by an assistant, and that the return be made through the state commissioner.

[Ed. Note.—For other cases, see Intoxicating Liquors, Cent. Dig. § 291; Dec. Dig. § 231.* 8 Va.-W. Va. Enc. Dig. 36; 14 Va.-W. Va. Enc. Dig. 589; 15 Va.-W. Va. Enc. Dig. 540.]

2. Statutes (§ 241*)—Penal Statutes—Construction.—A penal statute must be strictly construed.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. §§ 322, 323; Dec. Dig. § 241.* 12 Va.-W. Va. Enc. Dig. 771; 14 Va.-W. Va. Enc. Dig. 553; 15 Va.-W. Va. Enc. Dig. 936.]

3. Constitutional Law (§ 46*)—Constitutionality of Statute—Necessity of Determination.—The constitutionality of a statute will not be determined in any case unless it is absolutely necessary.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 43-45; Dec. Dig. § 46.* 3 Va.-W. Va. Enc. Dig. 184; 14 Va.-W. Va. Enc. Dig. 233; 15 Va.-W. Va. Enc. Dig. 196.]

Error to Circuit Court of City of Suffolk.

Gayle & Eason were found guilty of crime, and they bring error. Reversed.

Jno. N. Sebrell, Jr., of Norfolk, for plaintiffs in error.

The Attorney General, for the Commonwealth.

METROPOLITAN LIFE INS. CO. OF NEW YORK *v.* O'GRADY.

Jan. 15, 1914.

[80 S. E. 743.]

1. Evidence (§ 202*)—Admissions—Interest—Insurance.—In an action on a life insurance policy, declarations made by the insured before he applied for insurance are not admissible in evidence as admissions, since, to be admissible, the person making them must at the time have some interest in the matter afterwards in controversy.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 693-696; Dec. Dig. § 202.* 4 Va.-W. Va. Enc. Dig. 329; 14 Va.-W. Va. Enc. Dig. 310; 15 Va.-W. Va. Enc. Dig. 257.]

2. Evidence (§ 252*)—Declarations of Insured—Admission against Beneficiary.—In an action by a beneficiary on a life insurance policy, where defense is made on the ground that the insured had misrepresented his age and health, his declarations cannot be received in evidence to prove the truth of the representations; but, after

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

proof has been introduced tending to show his age or health was different from what he represented it to be, such declarations may be received to show that he had knowledge of his age and condition, and fraudulently misrepresented them.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 989-993; Dec. Dig. § 252.* 7 Va.-W. Va. Enc. Dig. 56; 14 Va.-W. Va. Enc. Dig. 505; 15 Va.-W. Va. Enc. Dig. 455.]

3. Appeal and Error (§ 1056*)—Harmless Error—Evidence.—In an action on a life insurance policy, declarations which were not distinctly remembered by the witness, made in a casual conversation by the insured before he had taken out the insurance, that he could not get any insurance on account of his health, and that he had taken all kinds of medicine from all kinds of doctors, if admissible, were not of sufficient importance to warrant a reversal of a judgment for plaintiff for their exclusion.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4187-4193, 4207; Dec. Dig. § 1056.* 1 Va.-W. Va. Enc. Dig. 592; 14 Va.-W. Va. Enc. Dig. 92; 15 Va.-W. Va. Enc. Dig. 68.]

4. Evidence (§ 262*)—Declarations—Verbal Admissions.—Where declarations were made in a casual conversation five or six years before the witness testified, and they appeared not to have been distinctly remembered or precisely identified, it cannot be said the trial court erred in rejecting them.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1019-1021; Dec. Dig. § 262.* 4 Va.-W. Va. Enc. Dig. 325; 14 Va.-W. Va. Enc. Dig. 310; 15 Va.-W. Va. Enc. Dig. 257.]

Error to Law and Equity Court of City of Richmond.

Action by Mrs. F. O'Grady against the Metropolitan Life Insurance Company of New York. Judgment for plaintiff, and defendant brings error. Affirmed.

Wellford & Taylor, of Richmond, for plaintiff in error.

Meredith & Cocke, of Richmond, for defendant in error.

WILKES' ADM'R *v.* WILKES et al.

Jan. 15, 1914.

[80 S. E. 745.]

1. Witnesses (§ 159*)—Competency as Witness—Execution of Will—Statutes.—A will is the sole act of the testator, and its execution is not such a contract, matter, or transaction as comes

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.